

MEMORANDUM OF UNDERSTANDING FOR  
SETTLEMENT OF OPERATING SUBSIDY LITIGATION

January 24, 1978

1. This memorandum applies to the following cases:  
Underwood v. Harris, Nos. 76-1603 & 1650 (D.C. Cir.)  
Dubose v. Hills, Civil No. H-75-303 (D. Conn.)  
Walter, et al. v. Hills, et al., Civil No. 75-345 (D. Conn.)  
Little, et al. v. Hills, et al., Civil No. 75-346 (D. Conn.)  
Pleasant, et al. v. Hills, et al., Civil No. H-76-26  
(D.Conn.)  
Morales, et al. v. Hills, Civil No. N-76-44 (D. Conn.)  
Adams, et al. v. Hills, et al., Civil No. H-76-89 (D. Conn.)  
Grundman, et al. v. Hills, et al., Civil No. H-76-160  
(D. Conn.)  
Johnson v. Harris, Civil No. N-76-109 (D. Conn.)  
Harris v. Ross, No. 76-1234, U.S. Sup. Ct.  
Harris v. Abrams, No. 76-1261, U.S. Sup. Ct.
2. The Secretary sought to obtain funds to implement the revised operating subsidy program enacted in P.L. 95-128 (October 12, 1977) for fiscal year 1978. The position of the Administration, however, is reflected in the Budget Message that the President submitted to the Congress on January 23, 1978.
3. The plaintiffs, who are tenants, and the federal defendants in the above-captioned cases, through their undersigned counsel, have determined to make every effort to settle these cases. Counsel have met to discuss the settlement, and have tentatively reached an understanding concerning the following basic principles which they presently contemplate will describe the outlines of the settlement.
  - a. The Secretary will pay to plaintiffs' counsel the amount credited to the reserve fund as of September 30, 1977 (a sum of approximately \$60 million) for distribution to past and present Section 236 tenants who would have qualified for operating subsidies prior to October 1, 1977. Prior to any such distribution and settlement of this litigation, plaintiffs'

counsel will present in writing to the Secretary a detailed plan for the equitable distribution of the fund, including an itemization of the estimated costs of accomplishing the distribution. Designees of the federal defendants will be made available to provide plaintiffs' counsel with the technical assistance they may need to prepare such a plan. The Secretary will review the plan and the itemization of costs and enter into settlement of this litigation if she is satisfied that the plan is feasible, the costs reasonable, and the mechanics for distribution provide assurance that the full amount of the reserve fund, less reasonable costs of administration, will be distributed to those persons entitled to distribution. The Secretary will advise the plaintiffs' counsel if the plan is feasible within 30 days of its submission. In the event such a plan is not feasible the parties shall consider alternative proposals for the distribution of the fund, such as making the payments for the period prior to October 1, 1977 pursuant to the standards of Section 206 of the Housing and Community Development Act of 1977, with an opportunity for other tenants who at any time during that period were eligible for Section 236 operating subsidies to share in the distribution.

b. The Secretary will provide assistance to plaintiffs counsel: (1) by furnishing envelopes with postage prepaid for mailing; (2) by making a WATS line available; and (3) by furnishing the relevant information required for distribution of the settlement sum, to the extent that such information is available from project files or from data required to be furnished to HUD in accordance with the provisions of the Regulatory Agreement. It is the intent of the parties that any plan for distribution shall involve no substantial costs or expenditures by the Department.

c. None of the sums distributed pursuant to paragraph 3(a) above may be used to pay attorneys' fees.

d. In Underwood v. Harris, C.A. D.C., Nos. 76-1603 & 1650, the plaintiffs will consent to the federal defendants' motion to vacate the judgement, remand the matter to the District Court with instructions that the District Court consider the settlement and, if the settlement is approved, dismiss the complaint as moot by reason of the settlement. In Dubose and the other Connecticut cases listed above, if the District Court approves the settlement, the complaints will be dismissed as moot on the basis of the parties' settlement. If, and only if, oral argument in Ross & Abrams is postponed until October Term 1978, then following the approval of the settlements in both Underwood and Dubose, the federal defendants will file, and the plaintiffs will consent to, a motion in Harris v. Ross, Sup. Ct. No. 76-1234, and Harris v. Abrams, Sup. Ct. No. 76-1261, to vacate the judgments of the Courts of Appeals and remand the matters to the Courts of Appeals with instructions that the causes be remanded to the District Court to consider the settlement agreement and, if the agreement is approved, to dismiss the complaints as moot by reason of the settlement.

e. The agreement to settle the cases identified in paragraph 1 hereof shall not be deemed in fulfillment of, nor in any way to limit, tenants' rights under Section 206 of the Housing and Community Development Act of 1977. Such agreement shall be without prejudice to the right of a Section 236 project owner to seek any rent increase that may be approvable, or obtain any increase approved, by the Secretary.

4. In addition to the cases listed in paragraph 1, approximately forty additional lawsuits have been filed regarding the issue of implementation of the 1974 Section 236 operating

subsidy program. These suits involve Section 236 tenants and projects which are not included among the cases listed in paragraph 1. After this memorandum of understanding has been executed by the parties' respective counsel, the plaintiffs and their counsel in all these cases will be contacted to determine whether they desire to join in the terms of the final settlement.

5. No settlement shall become effective without the approval of the Associate Attorney General and the Solicitor General.

6. The plaintiffs and the federal defendants through their respective counsel will continue to negotiate the details of the settlement in good faith.

dated January , 1978

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